

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CHRISTOPHER M. WALTERS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER

16-cv-432-jdp
06-cr-10-jdp

Petitioner Christopher M. Walters has filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255. Dkt. 2. Petitioner contends that under *Johnson v. United States*, 135 S. Ct. 2551 (2015) (*Johnson II*), and *Johnson v. United States*, 559 U.S. 133 (2010) (*Johnson I*), his prior robbery conviction under Wis. Stat. § 943.32(1)(a) no longer qualifies as a “crime of violence” under § 4B1.2 of the United States Sentencing Guidelines, and, as a result, his sentence is invalid. *Id.*

On June 23, 2016, the court stayed this case, in light of the fact that the Seventh Circuit was poised to decide whether *Johnson II* applies to prisoners sentenced as career offenders under the Guidelines’ residual clause, U.S.S.G. § 4B1.2(a)(2). Dkt. 3. On August 29, 2016, the Seventh Circuit issued decisions in *United States v. Gillespie*, No. 15-1686 (7th Cir. Aug. 29, 2016), *United States v. Hurlburt*, No. 14-3611 (7th Cir. Aug. 29, 2016), and *United States v. Rollins*, No. 13-1731 (7th Cir. Aug. 29, 2016), under which the Guidelines’ residual clause is invalid. Whether this determination has a retroactive effect has yet to be determined. But given that Walters’s release date is next year, we do not have time to wait for future case law. Accordingly, the court will lift the stay and order briefing on the petition.

Under Rule 4 of the Rules Governing Section 2255 Proceedings, it does not plainly appear that petitioner is not entitled to relief.

ORDER

IT IS ORDERED that:

1. The stay entered on June 23, 2016, Dkt. 3, is LIFTED.
2. Petitioner Christopher M. Walters will have until September 23, 2016, to submit a supplemental brief in support of his motion to vacate that specifically addresses the Seventh Circuit's recent decisions in *United States v. Gillespie*, No. 15-1686 (7th Cir. Aug. 29, 2016), *United States v. Hurlburt*, No. 14-3611 (7th Cir. Aug. 29, 2016), and *United States v. Rollins*, No. 13-1731 (7th Cir. Aug. 29, 2016).
3. Respondent will file its response to petitioner's motion no later than 21 days after petitioner files his supplemental brief.
4. Petitioner may file a traverse, if he so chooses, no later than 10 days after respondent files its response.

Entered September 9, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge